

AMENDED IN ASSEMBLY MARCH 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1643**

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**Introduced by Assembly Member Gonzalez**  
**(Coauthor: Assembly Member Chiu)**

January 11, 2016

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An act to amend Section 2810.5 of 4663 of, and to add Section 4660.2 to, the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL’S DIGEST

AB 1643, as amended, Gonzalez. ~~Employment: employer obligations.~~  
*Workers’ compensation: permanent disability apportionment.*

*Existing workers’ compensation law generally requires employers to secure payment of workers’ compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. An employer is liable only for the percentage of the permanent disability directly caused by the injury arising out of, and occurring in the course of, employment.*

*Existing law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. The physician is required to make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment, and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.*

*This bill would prohibit apportionment of permanent disability, in the case of a physical injury occurring on or after January 1, 2017, from being based on pregnancy, menopause, osteoporosis, or carpal tunnel syndrome. The bill would also prohibit apportionment of permanent disability, in the case of a psychiatric injury occurring on or after January 1, 2017, from being based on psychiatric disability or impairment caused by any of those conditions.*

*The bill would also provide, notwithstanding any other law, for injuries occurring on or after January 1, 2017, that the impairment ratings for breast cancer and the aftereffects of the disease, known as sequelae, shall in no event be less than comparable ratings for prostate cancer and its sequelae.*

~~Existing law requires an employer to post specified wage and hour information in a location where it can be viewed by employees. Existing law further requires an employer to provide each employee, as defined, at the time of hiring, with a notice that specifies the rate and the basis of the employee's wages and to notify each employee in writing of any changes to the information set forth in the notice, as specified.~~

~~This bill would make nonsubstantive changes to the latter provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 4660.2 is added to the Labor Code, to
- 2     read:
- 3     4660.2. Notwithstanding any other law, for injuries occurring
- 4     on or after January 1, 2017, the impairment ratings for breast
- 5     cancer and its sequelae shall in no event be less than comparable
- 6     ratings for prostate cancer and its sequelae.
- 7     SEC. 2. Section 4663 of the Labor Code is amended to read:
- 8     4663. (a) Apportionment of permanent disability shall be based
- 9     on causation.
- 10    (b) Any physician who prepares a report addressing the issue
- 11    of permanent disability due to a claimed industrial injury shall in
- 12    that report address the issue of causation of the permanent
- 13    disability.
- 14    (c) (1) In order for a physician's report to be considered
- 15    complete on the issue of permanent disability, the report must
- 16    include an apportionment determination. ~~A~~

1 (2) (A) A physician shall make an apportionment determination  
2 by finding what approximate percentage of the permanent disability  
3 was caused by the direct result of injury arising out of and  
4 occurring in the course of employment and what approximate  
5 percentage of the permanent disability was caused by other factors  
6 both before and subsequent to the industrial injury, including prior  
7 industrial injuries. ~~¶~~

8 (B) *Apportionment in the case of a physical injury occurring*  
9 *on or after January 1, 2017, shall not be based on any of the*  
10 *following conditions:*

11 (i) *Pregnancy.*

12 (ii) *Menopause.*

13 (iii) *Osteoporosis.*

14 (iv) *Carpal tunnel syndrome.*

15 (C) *Apportionment in the case of a psychiatric injury occurring*  
16 *on or after January 1, 2017, shall not be based on psychiatric*  
17 *disability or impairment caused by any of the conditions listed in*  
18 *subparagraph (B).*

19 (3) *If the physician is unable to include an apportionment*  
20 *determination in his or her report, the physician shall state the*  
21 *specific reasons why the physician could not make a determination*  
22 *of the effect of that prior condition on the permanent disability*  
23 *arising from the injury. The physician shall then consult with other*  
24 *physicians or refer the employee to another physician from whom*  
25 *the employee is authorized to seek treatment or evaluation in*  
26 *accordance with this division in order to make the final*  
27 *determination.*

28 (d) An employee who claims an industrial injury shall, upon  
29 request, disclose all previous permanent disabilities or physical  
30 impairments.

31 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or  
32 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,  
33 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,  
34 3212.11, 3212.12, 3213, and 3213.2.

35 ~~SECTION 1. Section 2810.5 of the Labor Code is amended to~~  
36 ~~read:~~

37 ~~2810.5. (a) (1) At the time of hiring, an employer shall provide~~  
38 ~~to each employee a written notice, in the language the employer~~  
39 ~~normally uses to communicate employment-related information~~  
40 ~~to the employee, containing the following information:~~

1     ~~(A) The rate or rates of pay and basis thereof, whether paid by~~  
2     ~~the hour, shift, day, week, salary, piece, commission, or otherwise,~~  
3     ~~including any rates for overtime, as applicable.~~

4     ~~(B) Allowances, if any, claimed as part of the minimum wage,~~  
5     ~~including meal or lodging allowances.~~

6     ~~(C) The regular payday designated by the employer in~~  
7     ~~accordance with the requirements of this code.~~

8     ~~(D) The name of the employer, including any “doing business~~  
9     ~~as” names used by the employer.~~

10    ~~(E) The physical address of the employer’s main office or~~  
11    ~~principal place of business, and a mailing address, if different.~~

12    ~~(F) The telephone number of the employer.~~

13    ~~(G) The name, address, and telephone number of the employer’s~~  
14    ~~workers’ compensation insurance carrier.~~

15    ~~(H) That an employee: may accrue and use sick leave; has a~~  
16    ~~right to request and use accrued paid sick leave; may not be~~  
17    ~~terminated or retaliated against for using or requesting the use of~~  
18    ~~accrued paid sick leave; and has the right to file a complaint against~~  
19    ~~an employer who retaliates.~~

20    ~~(I) Any other information the Labor Commissioner deems~~  
21    ~~material and necessary.~~

22    ~~(2) The Labor Commissioner shall prepare a template that~~  
23    ~~complies with the requirements of paragraph (1). The template~~  
24    ~~shall be made available to employers in the manner determined~~  
25    ~~by the Labor Commissioner.~~

26    ~~(3) If the employer is a temporary services employer, as defined~~  
27    ~~in Section 201.3, the notice described in paragraph (1) must also~~  
28    ~~include the name, the physical address of the main office, the~~  
29    ~~mailing address if different from the physical address of the main~~  
30    ~~office, and the telephone number of the legal entity for whom the~~  
31    ~~employee will perform work, and any other information the Labor~~  
32    ~~Commissioner deems material and necessary. The requirements~~  
33    ~~of this paragraph do not apply to a security services company that~~  
34    ~~is licensed by the Department of Consumer Affairs and that solely~~  
35    ~~provides security services.~~

36    ~~(b) An employer shall notify his or her employees in writing of~~  
37    ~~any changes to the information set forth in the notice within seven~~  
38    ~~calendar days after the time of the changes, unless one of the~~  
39    ~~following applies:~~

1     ~~(1) All changes are reflected on a timely wage statement~~  
2     ~~furnished in accordance with Section 226.~~

3     ~~(2) Notice of all changes is provided in another writing required~~  
4     ~~by law within seven days of the changes.~~

5     ~~(e) For purposes of this section, “employee” does not include~~  
6     ~~any of the following:~~

7         ~~(1) An employee directly employed by the state or any political~~  
8         ~~subdivision thereof, including any city, county, city and county,~~  
9         ~~or special district.~~

10        ~~(2) An employee who is exempt from the payment of overtime~~  
11        ~~wages by statute or the wage orders of the Industrial Welfare~~  
12        ~~Commission.~~

13        ~~(3) An employee who is covered by a valid collective bargaining~~  
14        ~~agreement if the agreement expressly provides for the wages, hours~~  
15        ~~of work, and working conditions of the employee, and if the~~  
16        ~~agreement provides premium wage rates for all overtime hours~~  
17        ~~worked and a regular hourly rate of pay for those employees of~~  
18        ~~not less than 30 percent more than the state minimum wage.~~